UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1997/NGO/8
25 February 1997

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-third session
Item 8 of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by the International Commission of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[30 January 1997]

GE.97-10828 (E)

Draft basic principles and guidelines on the right to reparation for victims of violations of human rights and international humanitarian law

1. The International Commission of Jurists (ICJ), jointly with Redress, a London-based human rights organization, submits this statement in accordance with Economic and Social Council resolution 1996/31 of 25 July 1996, which amends Council resolution 1296 (XLIV) of 23 May 1968, for consideration by the Commission on Human Rights under item 8 of its provisional agenda.

2. The importance of reparation to survivors of torture, disappearances and other violations of human rights and international humanitarian law is attested by health professionals and by survivors themselves. Seeking and obtaining justice, even long after the violation has occurred, is an important part of the rehabilitation process. Its impact goes beyond the individual survivor to include family and community as well.

3. International human rights and international humanitarian law norms oblige States to afford effective remedies and an enforceable right to reparation to victims of violations of human rights and humanitarian law.

4. Although the right to reparation is well established under international law, there is a need to define its content more clearly. International instruments assert the right and customary law recognizes it, but there exists no authoritative detailed interpretation. The declaration by the international community of principles and guidelines on the right to reparation will set standards for implementation in national legal systems and encourage greater consistency and coherence in the application of this right. It will also assist regional or international courts and tribunals in recommending appropriate remedies for violations. Survivors of violations and their representatives will be better able to assert and realize the right to reparation. Measures are needed to improve implementation of the right to reparation. The study by the Special Rapporteur of the Sub-Commission on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1993/8) and the discussion of it by the Sub-Commission suggest that there are serious discrepancies in the extent of implementation of this right.

5. The draft basic principles and guidelines on the right to reparation correctly identify a range of elements which make up reparation. Reparation is often equated with financial compensation alone. This misconception gives States the opportunity to claim lack of available funds, particularly when the number of potential claimants is large. It can also give survivors the feeling they are being "bought off". There are other things survivors of violations need. Medical rehabilitation - sometimes involving specialist psychological therapy and counselling, as well as treatment of physical effects - is frequently required. But it is moral satisfaction which is the central component of reparation and the element often seen as most important by survivors. This might take a variety of forms but must include measures taken by the State to investigate the facts, acknowledge the truth and bring perpetrators to justice. Commemorations and other ways of paying tribute to the dead and those who suffered will also be considered important. For some,

the opportunity to tell their story has therapeutic value. The experiences of societies trying to come to terms with the abuses of a prior regime show that justice will not be seen to be done without these elements.

6. Nevertheless money can be important in restoring survivors' way of life. Compensation should cover pain and suffering as well as material damage, restitution of property and other loss and entitlements. Consideration should also be given to payment of punitive damages which will act as a deterrent. Procedures for claiming compensation must be accessible, speedy, enforceable and not subject to statutes of limitation.

7. The international community as a whole has an important role in providing a remedy to individuals and ensuring implementation of the right to reparation at the national level. This role can be fulfilled through inter-State mechanisms, access by individuals to international mechanisms for the protection of human rights and international humanitarian law, and also the exercise by States of universal jurisdiction over alleged perpetrators who are not brought to justice in their own State. In addition, States should not be able to invoke immunities to shield themselves from liability for violations of human rights and international humanitarian law.

8. ICJ and Redress welcome the draft basic principles and guidelines because they provide a much needed definition of the right to reparation and give due recognition to the range of elements which make up this right.

9. ICJ and Redress respectfully request the Commission on Human Rights to circulate the draft to Governments and intergovernmental and non-governmental organizations, asking for their comments and observations. They also request the Commission to ask the former Special Rapporteur, Mr. Theo van Boven, to submit to the Commission at its fifty-fourth session a revised version of the draft principles and guidelines on the right to reparation for victims of violations of human rights and international humanitarian law. In his revised version, Mr. van Boven should take into consideration such comments and observations.